

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tim Markbreiter	Team: Squad #07	CCRB Case #: 202208801	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 12/15/2022 2:18 PM	Location of Incident: 2154 Nostrand Avenue	18 Mo. SOL 6/15/2024	Precinct: 70		
Date/Time CV Reported Thu, 12/15/2022 8:40 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 12/27/2022 11:20 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Jeffrey Almanzar	23463	973212	FTU 13
2. PO Michael Lui	12197	974292	FTU 13
3. SGT Christopher Western	05329	933477	FTU 13

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Alexander Rott	21232	973739	FTU 13
2. PO Adreanna Jewet	09374	974213	FTU 13
3. PO Trecia Broomfield	26660	973266	FTU 13
4. PO Waiyeungsamuel Tse	12977	974605	FTU 13

Officer(s)	Allegation	Investigator Recommendation
A . PO Jeffrey Almanzar	Force: Police Officer Jeffrey Almanzar used physical force against § 87(2)(b)	
B . PO Michael Lui	Force: Police Officer Michael Lui used physical force against § 87(2)(b)	
C . PO Jeffrey Almanzar	Discourtesy: Police Officer Jeffrey Almanzar spoke discourteously to § 87(2)(b)	
D . PO Jeffrey Almanzar	Abuse: Police Officer Jeffrey Almanzar threatened to arrest § 87(2)(b)	
E . SGT Christopher Western	Force: Sergeant Christopher Western used physical force against § 87(2)(b)	

Case Summary

On December 15, 2022, at 8:40p.m., Sgt. Christopher Western from the FTU (Field Training Unit) reported this incident to IAB on behalf of § 87(2)(b) who alleged excessive force. (BR 1).

On December 15, 2022, at approximately 1:20 p.m., § 87(2)(b) went to the McDonalds on 2154 Nostrand Avenue in Brooklyn working delivery for UberEATS. § 87(2)(b) was sitting at a table, waiting for an order, when the security guard, § 87(2)(b) warned him that he could not sit there. § 87(2)(b) did not leave the table. Five minutes later, five police officers, including Jeffery Almanzar and Michael Lui (Field Training Unit 13), approached § 87(2)(b) and told him to leave. Although § 87(2)(b) initially refused to leave, he eventually complied and left the table. As § 87(2)(b) was leaving the McDonald's PO Almanzar pushed § 87(2)(b) (Allegation A: Force, § 87(2)(g) § 87(2)(b) also alleged that PO Lui used force against him. (Allegation B: Force, § 87(2)(g) Once outside, PO Almanzar told § 87(2)(b) to "get the fuck out" (Allegation C: Discourtesy, § 87(2)(g) and allegedly said that he would "lock up" § 87(2)(b) if he went back inside the McDonalds (Allegation D: Abuse of Authority, § 87(2)(g).

PO Almanzar and PO Lui then returned to their post and § 87(2)(b) called for an ambulance, complaining of shoulder pain. Shortly after the ambulance arrived, Sgt. Christopher Western (Field Training Unit 13) arrived on scene and spoke with § 87(2)(b) who said he wanted to file a complaint. Sgt. Western spoke with the officers and employees at the McDonald's. Sgt. Western then allegedly pushed § 87(2)(b) head into a metal door, twisted § 87(2)(b) arm, and arrested him for trespassing (Allegation E: Force, § 87(2)(g).

The CCRB received 12 Body-Worn Camera (BWC) videos from the NYPD (BR 2).

Findings and Recommendations

Allegation (A) Force: Police Officer Jeffery Almanzar used physical force against § 87(2)(b)

Allegation (B) Force: Police Officer Michael Lui used physical force against § 87(2)(b)

Allegation (C) Discourtesy: Police Officer Jeffery Almanzar spoke discourteously to § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Jeffery Almanzar threatened to arrest § 87(2)(b)

On December 15, 2022, § 87(2)(b) was working UberEATS delivery and went to the McDonalds on 2154 Nostrand Avenue in Brooklyn because it is usually a hotspot for orders. § 87(2)(b) parked his bike directly outside of the McDonalds and entered at around 1:20 p.m. § 87(2)(b) then sat at a booth in the corner of McDonalds and after sitting there for no more than 10 minutes, he was approached by the security guard working for McDonalds, § 87(2)(b) § 87(2)(b) told § 87(2)(b) that he was not allowed to sit there because the McDonalds did not want anyone charging their phones there. § 87(2)(b) asked § 87(2)(b) to move, but never asked him to leave. § 87(2)(b) questioned why he had to leave. After about a minute, § 87(2)(b) left and spoke with police officers who were standing outside. Five police officers, including PO Almanzar and PO Lui, then entered the McDonalds and told § 87(2)(b) that he had to leave. Initially, § 87(2)(b) refused to leave, but after the officers attempted to grab him, § 87(2)(b) got up and proceeded to exit the McDonald's. As § 87(2)(b) approached the exit door, he turned to show PO Almanzar his phone which had an active delivery on it. PO Almanzar and PO Lui then pushed and grabbed § 87(2)(b) causing § 87(2)(b) to lose his balance. As he got up, PO Almanzar pushed § 87(2)(b) into the front door and backwards, which caused him to slip on his shoe, and hit his head and shoulder on the

metal door. Once § 87(2)(b) was outside, PO Almanzar allegedly told him that he would “lock him up” if he went back into the McDonalds (BR 3).

In PO Almanzar’s BWC, at 1:00 § 87(2)(b) approaches PO Almanzar and PO Lui at the corner of Nostrand Avenue and Flatbush Avenue. § 87(2)(b) tells the officers that there is a male smoking a vape pen, which is prohibited at the establishment, and trespassing at McDonalds. § 87(2)(b) tells the officers that he practically begged the male to leave and that he is not a customer but is one of “those Uber people.” The officers and § 87(2)(b) then walk to the McDonalds and enter through the rear entrance. At 2:37, PO Almanzar and PO Lui approach § 87(2)(b) as he sits on his phone at the far-right table booth. PO Almanzar tells § 87(2)(b) “Yo man you can’t be here, they don’t want you here.” § 87(2)(b) tells PO Almanzar that he is working deliveries and PO Almanzar tells him that it is a private property and that he is not wanted there. § 87(2)(b) questions who it is that wants him to leave, and PO Almanzar again tells him to leave. § 87(2)(b) repeats that he is doing deliveries and PO Almanzar tells him that it does not matter and that they want him out. § 87(2)(b) tells the officers that he is not leaving and then PO Lui reaches his hand out towards § 87(2)(b) and says “you gotta move, let’s go” but does not make contact with him. § 87(2)(b) then moves his arm around and says, “let me get my stuff” and makes a motion toward a pair of gloves on the table. At 3:20, § 87(2)(b) tells the officers not to touch him, grabs his red Door Dash bag, and gets up from the booth to leave. At 3:35, § 87(2)(b) proceeds to walk towards the exit, walking backwards with his back towards the door facing the officers, with PO Almanzar and PO Lui following behind him. § 87(2)(b) attempts to walk past the register, towards the front entrance of the McDonalds facility and PO Almanzar places his hands on § 87(2)(b) lightly and ushers him towards the back entrance, where the officers initially entered from. In response, at 3:46, § 87(2)(b) points towards the front entrance, where a few people can be seen standing at the counter, and says, “I’m leaving right here.” § 87(2)(b) again attempts to walk towards the front entrance and PO Almanzar extends his right arm, to prevent § 87(2)(b) from walking that direction and lightly pushes § 87(2)(b) towards the back entrance with both arms. At 3:53, PO Almanzar says, “you’re going to leave through here” and then pushes § 87(2)(b) again with more force. At 3:55, § 87(2)(b) turns around and starts walking towards the entrance, and PO Almanzar approaches § 87(2)(b) from behind and pushes § 87(2)(b) in the back saying “don’t play that game, all right.” § 87(2)(b) continues walking towards the exit and at 3:57, § 87(2)(b) turns around and tells PO Almanzar to stop pushing him. PO Almanzar then pushes § 87(2)(b) again and § 87(2)(b) repeats his request to stop being pushed. In response, PO Almanzar proceeds to push § 87(2)(b) with more force into the exit door and then grabs § 87(2)(b) by his jacket and pushes him outside of the McDonalds, as § 87(2)(b) says, “I’m not even touching you.” At 4:04, § 87(2)(b) is now standing outside of the McDonalds and PO Almanzar approaches § 87(2)(b) grabs him by the jacket, pushes him again, and he says to § 87(2)(b) “get the fuck out.” Directly after this, PO Lui places his arm out, separating § 87(2)(b) and PO Almanzar (BR 4).

PO Almanzar testified that at approximately 2:00 p.m. on December 15th, he and PO Lui responded to a 911 call from § 87(2)(b) about a dispute at McDonalds. PO Almanzar and PO Lui met § 87(2)(b) on the corner outside of the McDonalds and § 87(2)(b) explained to the officers that he wanted § 87(2)(b) to leave the McDonalds because he was smoking inside of the building. The officers also confirmed with § 87(2)(b) that he had jurisdiction to ask § 87(2)(b) to leave the McDonalds. § 87(2)(b) then led PO Almanzar and PO Lui to the inside of the McDonalds, and he pointed out § 87(2)(b) to the officers, who was sitting at a booth in the corner the rear entrance of the McDonalds. PO Almanzar approached § 87(2)(b) and asked him to leave the McDonalds. § 87(2)(b) refused to leave which prompted PO Almanzar to ask him a few more times to leave. PO Almanzar noted that at that point because § 87(2)(b) refused to leave, he could have been arrested for trespassing. Since § 87(2)(b) was refusing to leave, PO Almanzar reached for § 87(2)(b) arm to guide him out of the McDonalds, and § 87(2)(b) flung his arm away from PO Almanzar. § 87(2)(b) eventually got up from the booth on his own however, PO Almanzar was not of the belief that § 87(2)(b) was going to leave, despite confirming that he heard § 87(2)(b) say,

“alright I’m leaving.” As § 87(2)(b) was walking towards the front entrance exit, PO Almanzar explained that he pushed § 87(2)(b) because he told § 87(2)(b) multiple times to leave through the rear exit. When asked why he wanted § 87(2)(b) to leave through the other exit, PO Almanzar said that the other entrance was crowded and since it was 2:00 p.m., it was considered rush hour. When shown his BWC, PO Almanzar said that although § 87(2)(b) was walking towards the exit, he was tensing his body up which caused PO Almanzar to push him again towards the exit. PO Almanzar added that § 87(2)(b) was pushing back but later amended this to say that § 87(2)(b) could have potentially pushed back. PO Almanzar noted that § 87(2)(b) was tensing up, pushing back, and resisting by attempting to walk back into the McDonalds. PO Almanzar then explained that he was of the belief that § 87(2)(b) was trying to fight him back and that before § 87(2)(b) could execute this, PO Almanzar pushed him out of the McDonalds. When asked why he believed that § 87(2)(b) was going to fight him, PO Almanzar said that § 87(2)(b) hands went up, with an open palm hand, and he did not know if § 87(2)(b) was going to punch him. At 3:58 of PO Almanzar’s BWC, once § 87(2)(b) was outside of the McDonalds, PO Almanzar confirmed that he heard himself say to § 87(2)(b) “get the fuck out” although he was unsure why he said that. PO Almanzar also said that at 3:58, § 87(2)(b) hands were up with an open palm which to PO Almanzar, seemed as if he was trying to block something. (BR 5).

When shown PO Almanzar’s BWC from the incident, PO Lui testified that once § 87(2)(b) was walking out of the McDonalds, there was no indication that he was refusing to leave and that at 3:58, he heard § 87(2)(b) ask PO Almanzar to stop pushing him. PO Lui noted that at this point, he had placed his hands on § 87(2)(b) but that it was a slight touch in an effort to get him out of the McDonalds. PO Lui saw PO Almanzar push § 87(2)(b) multiple times. At 4:04, § 87(2)(b) was now outside of the McDonalds and PO Lui confirmed that he placed his arm out between § 87(2)(b) and PO Almanzar in order to prevent PO Almanzar from pushing § 87(2)(b) again (BR 6).

In accordance with NYPD Patrol Guide Procedure 221-01, entitled Force Guidelines, the primary duty of all members of the service is to protect human life, including the lives of individuals being placed in police custody. Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In determining whether the use of force is reasonable members of service should consider the immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders. All members of the service at a police incident must use reasonable force, employ less lethal alternatives, and prioritize de-escalation, whenever possible (BR 7).

NYPD Patrol Guide 200-02, entitled Mission Values, and Values of the New York City Police Department, states that members of service must maintain a higher standard of integrity than is generally expected of other because so much is expected of them. Members of service pledge to value human life, respect the dignity of each individual, and render their services with courtesy and civility (BR 8).

In Case 2015-15012, The NYPD Assistant Deputy Commissioner of Trials, Paul M. Gamble, ruled that when an officer made discourteous statements that served no purpose but to belittle a civilian's request, the officers’ actions were improper (BR 9).

The BWC shows that § 87(2)(b) refused multiple orders to leave the McDonald's and when leaving, he was not complying with PO Almanzar's instructions. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(b) once § 87(2)(b) started walking towards the exit, PO Almanzar continued to push § 87(2)(b). Additionally, at 4:02 in PO Lui's BWC footage, after § 87(2)(b) complained about being pushed, PO Almanzar pushed § 87(2)(b) full body against the door and then again pushed him once § 87(2)(b) was outside the McDonald's. These additional pushes escalated a tense situation and were not necessary to ensure that § 87(2)(b) left the McDonald's.

§ 87(2)(g)

§ 87(2)(g) BWC clearly captures § 87(2)(b) attempting to leave the McDonalds and upon asking PO Almanzar to stop pushing him, PO Almanzar immediately pushed him with more force against the front, metal door of the McDonalds, as a reaction to this request. PO Almanzar testified that § 87(2)(b) pushed his back but when asked to provide evidence to support this claim, PO Almanzar walked back this statement and said that § 87(2)(b) could have potentially pushed back. Once PO Almanzar pushed § 87(2)(b) against the metal door, PO Lui said that he physically separated PO Almanzar and § 87(2)(b) in order to prevent PO Almanzar from continuing to push § 87(2)(b). Furthermore, at no point in this interaction did PO Almanzar make any attempt to de-escalate the situation. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Neither PO Lui's nor PO Almanzar's BWC ever capture PO Lui employing force onto § 87(2)(b). Once outside, PO Lui extended his arm out to separate PO Almanzar and § 87(2)(b) in order to prevent § 87(2)(b) from being pushed by PO Almanzar. § 87(2)(g)

§ 87(2)(b)

In his testimony, PO Almanzar admittedly told § 87(2)(b) to "get the fuck out" once § 87(2)(b) was outside of the McDonalds, although, he did not recall why he said that. Since § 87(2)(b) had already been outside of the McDonalds and was not resisting, it did not appear that the use of a profanity was necessary and was used to demean § 87(2)(b). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

PO Almanzar testified that § 87(2)(b) could have been arrested if he continued to refuse to leave the McDonald, although, he never mentioned stating this to § 87(2)(b). While § 87(2)(b) alleged that PO Almanzar threatened to "lock him up," BWC did not capture this statement at any point throughout their interaction. § 87(2)(g)

§ 87(2)(b)

Allegation (E) Force: Sergeant Christopher Western used physical force against § 87(2)(b)

§ 87(2)(b) then called 911 because of the injuries he sustained from being pushed out of the McDonalds. An ambulance responded and while § 87(2)(b) was in the ambulance, Sgt. Western entered and asked if he would be going to the hospital. § 87(2)(b) ultimately decided not to go. Once he exited the ambulance, Sgt. Western asked § 87(2)(b) if he wanted to press charges against the officers, and § 87(2)(b) said that he did. Sgt. Western told § 87(2)(b) to stay where he was and then went into the McDonald's. Two to three minutes later, Sgt. Western exited the McDonalds and pushed the right side of § 87(2)(b) head into a metal door, outside of the McDonalds, and twisted § 87(2)(b) arm to handcuff him. § 87(2)(b) was then taken to the 70th Precinct stationhouse and was not released until 2:00 p.m. the following day. Upon his release, § 87(2)(b) immediately went to the hospital and was diagnosed with a fracture in his toe and shoulder.

According to Sgt. Western's BWC, he first arrived at the scene at 2:04 p.m. and at 1:20 of his BWC he went into the ambulance to confirm that § 87(2)(b) called the police. From there, Sgt. Western stands outside of the ambulance and the officers on scene explain to Sgt. Western what occurred with § 87(2)(b). At 4:04 of Sgt. Western's BWC, § 87(2)(b) gets out of the ambulance and Sgt. Western asks him if he would like to make a complaint. Sgt. Western ushers § 87(2)(b) towards the far end of the sidewalk, under an awning next to the McDonalds, and he proceeds to explain to § 87(2)(b) how to file a complaint with the Civilian Complaint Review Board. At 5:00, Sgt. Western

walks away from § 87(2)(b) and speaks with PO Almanzar and PO Lui. PO Almanzar explains to Sgt. Western that the McDonalds did not want him inside, so they asked § 87(2)(b) to leave. PO Almanzar then says that § 87(2)(b) refused to leave so he proceeded to push him out of the McDonalds. At 5:38, Sgt. Western asks PO Almanzar how he got § 87(2)(b) out and PO Almanzar says that he had to put his hands on § 87(2)(b) and bring him out. Sgt. Western then tells PO Almanzar “You can’t do it; we have to take it a step further” and that § 87(2)(b) is now claiming that he has injuries. Sgt. Western confirms with PO Almanzar that the McDonald’s security guard did not want § 87(2)(b) inside their establishment. Sgt. Western then goes inside the McDonalds, along with PO Almanzar and PO Lui, and at 7:46 approaches § 87(2)(b) confirmed with Sgt. Western that he has authority to ask § 87(2)(b) to leave and that upon his request, § 87(2)(b) refused to leave. At 8:39, Sgt. Western goes to the cashier to obtain the managers information and he explains to the manager that § 87(2)(b) is most likely going to be arrested. After obtaining the managers information, Sgt. Western, PO Lui, and PO Almanzar exit the McDonalds and at 12:42, they approach § 87(2)(b) and he is standing in the same area where Sgt. Western told him to wait. § 87(2)(b) is on the phone and Sgt. Western tells § 87(2)(b) that they have to take him back to the precinct. § 87(2)(b) agrees to this and at 12:50, Sgt. Western says “handcuffs” and § 87(2)(b) asks for what. Sgt. Western tells § 87(2)(b) that it is due to the incident that happened inside the McDonalds. Sgt. Western then grabs § 87(2)(b) wrist, asks him to turn around, and instructs him to hang up his phone. At 13:03, Sgt. Western removes § 87(2)(b) phone from his possession and § 87(2)(b) is successfully handcuffed at 13:22. § 87(2)(b) then asks if he can tell his girlfriend bye on the phone and Sgt. Western says on the phone “he’ll call you in a little bit” and hangs up the phone. § 87(2)(b) was then placed in a NYPD van and taken to the 70th precinct, with PO Almanzar being the arresting officer. BWC did not capture § 87(2)(b) head being pushed against a metal door by Sgt. Western (BR 10).

Sgt. Western testified that on December 15, 2022, he received a radio run for an IAB job regarding allegations of NYPD officers using force at 2154 Nostrand Avenue. Once Sgt. Western responded to the location, he met § 87(2)(b) inside an ambulance and § 87(2)(b) told him that he got into a physical altercation with NYPD officers. § 87(2)(b) was not taken to the hospital and after exiting the ambulance, Sgt. Western asked § 87(2)(b) if he wanted to make a complaint and § 87(2)(b) said he did. At this point, § 87(2)(b) was free to leave, if he chose to, and Sgt. Western did not consider him detained. Sgt. Western then spoke with PO Lui and PO Almanzar, and they explained that § 87(2)(b) was asked to leave the McDonalds and he refused to do so. Sgt. Western noted that both PO Almanzar and PO Lui were fairly new officers and that they did not know that they had probable cause to arrest § 87(2)(b) for trespassing. When asked what he meant when he said “you can’t do it, we have to take it a step further” at 5:38 of his BWC to PO Almanzar, Sgt. Western explained that PO Almanzar should not have to remove a civilian like that, and that § 87(2)(b) should have been arrested once he refused to leave. Additionally, PO Almanzar said that he wanted to let the officers know that this would become an IAB investigation due to the force that was used when § 87(2)(b) was removed (BR 10).

Once Sgt. Western understood what had happened, he spoke to § 87(2)(b) and the manager of McDonalds, and they confirmed that § 87(2)(b) had the authority to ask someone to leave the McDonalds. Sgt. Western then approached § 87(2)(b) with PO Lui and PO Almanzar and they arrested § 87(2)(b) for trespassing. When shown his BWC footage from 12:43 to 13:24, Sgt. Western confirmed that he asked § 87(2)(b) to stop resisting as § 87(2)(b) was stiffing up his arms while the officers attempted to handcuff him. Sgt. Western said that § 87(2)(b) arm might have been stiff due an injury sustained from being pushed out of the McDonalds. When asked if there were any alternative methods that the officers could have employed when handcuffing a civilian with an injured arm, Sgt. Western said that the number one priority is to ensure that all parties are safe and that there was no alternative means to handcuff § 87(2)(b) (BR 11).

As Sgt. Western approached § 87(2)(b) to handcuff him, § 87(2)(b) was in the middle of a phone call and seemed confused when Sgt. Western told him “Handcuffs.” Sgt. Western then

successfully handcuffed § 87(2)(b) as he was still talking on the phone. Although § 87(2)(b) alleged that Sgt. Western had pushed § 87(2)(b) head into a metal door, BWC did corroborate this allegation and rather, Sgt. Western placed § 87(2)(b) against the wall § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 12)
- PO Almanzar has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject. (BR 13)
- PO Lui has been a member-of-service for one year and this is the first CCRB complaint to which he has been a subject. (BR 14)
- Sgt. Western has been a member of service for 19 years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of May 12, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 16).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 7

Investigator:	<u>Tim Markbreiter</u> Signature	<u>Inv. Tim Markbreiter</u> Print Title & Name	<u>May 16, 2023</u> Date
Squad Leader:	<u>Manager Vanessa Rosen</u> Signature	<u>Manager Vanessa Rosen</u> Print Title & Name	<u>August 11, 2023</u> Date
Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date